IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 138 of 2004

M/s Reading & Bates Drilling Co.
as agent of Mr. Emaneul Schembri …Appellant

Versus

The Commissioner of Income Tax,
Dehradun.

….Respondent

Miss. Krishi Shukla/Dr. Udyog Shukla, Advocates for the appellant.
Mr. S.K. Posti, Advocate for the respondent.

Coram: Hon. Cyriac Joseph, C.J.
Hon. J.C.S. Rawat, J.

JUDGMENT

CYRIAC JOSEPH, C.J. (Oral)

1. This appeal is filed against the order dated 09.07.2004 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi in I.T.A. No. 4432/Del/2000. The appellant is the assessee. The dispute relates to the Assessment Year 1998-1999.

2. The substantial questions of law raised in the appeal are as follows:

(a) Whether on the facts and circumstances of the case, the Tribunal erred in law in not appreciating the true construction of Section 9 (1)(ii) of the Act read with Explanation thereto?

(b) Whether on the facts and in the circumstances of the case, the Tribunal erred in holding that the "off period" salary was chargeable to tax in India despite the fact that the non-resident employee was not present in India during the "off period"?

(c) Whether on the facts and in the circumstances of the case, the Tribunal erred in not appreciating the salary paid for the "off period" when the employee technicians were physically not present in India and were required to make themselves available for training, on the spot demonstration, etc. as set out in the

employment letter could be said to accrue or deemed to accrue in India so as to be taxable in India?

(d) Whether on the facts and circumstances of the case, the Tribunal erred in not appreciating that the salary paid to a non-resident employee under an employment contract executed outside India, for the "off period", could be held liable to be paid on account of services rendered while the employee was in India?

(e) Whether on the facts and circumstances of the case, the Tribunal has misdirected himself in law in basing its conclusion on suspicions and surmises and irrelevant material on record?

(f) Whether on the facts and in the circumstances of the case, the finding arrived at by the Tribunal is perverse inasmuch as no reasonable person correctly informed of the position of law would come to such a conclusion?

3. Though the appellant has raised different questions of law as quoted above, in substance there is only one question of law, i. e, whether the Tribunal erred in holding that 'off period salary' paid to the assessee was taxable under section 9 (1)(ii) of the Income Tax Act, 1961. In Commissioner of Income Tax- and another Vs. Sedco Forex International Drilling Co. Ltd. and connected cases reported in (2003) 264 ITR 320, a Division Bench of this Court held that the payment of salary for "off period" was income earned in India, i.e., for services rendered in India under Section 9(1)(ii) of the Income Tax Act, 1961 and that "off period salary" was taxable under section 9(1)(ii) of the Income Tax Act, 1961.

4. Following the above mentioned judgment of a Division Bench of this Court, the appeal is dismissed.

(J.C.S. Rawat, J.) **(Cyriac Joseph, C.J.)**
28.09.2005 **28.09.2005**

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